

ILLINOIS REGISTER
DEPARTMENT OF REVENUE
NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Income Tax
- 2) Code Citation: 86 Ill. Adm. Code 100
- 3)

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| <u>Section Number:</u> 100.3015 | <u>Proposed Action:</u> New Section |
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- 4) Statutory Authority: 35 ILCS 5/1401(a) and 5/1501(a)(1).
- 5) A Complete Description of the Subjects and Issues Involved: Public Act 92-846 amended IITA Section 1501(a)(1) to permit taxpayers to treat all income (other than employee compensation) as business income for purposes of allocating and apportioning its income to Illinois. This rulemaking provides guidance for taxpayers on the manner of making the election and the consequences of doing so.
- 6) Will this rulemaking replace an emergency rules currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this rulemaking contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? Yes

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| <u>Section Number</u> 100.9400 | <u>Proposed Action</u> Amendment | <u>IL Register Citation</u> 29 Ill. Reg. 20318, 12/16/05 |
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- 10) Statement of Statewide Policy Objectives: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 11) Time, Place and Manner in which interested persons may comment on this rulemaking: Persons who wish to submit comments on this rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

Paul Caselton
Deputy General Counsel - Income Tax
Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield, Illinois 62794

Phone: (217) 524-3951
- 12) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not-for-profit corporations affected: This rulemaking provides guidance needed by small businesses regarding the election

to treat all income (other than employee compensation) as business income. Municipalities and not-for-profit corporations are not affected.

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: July 2005

The full text of the Proposed Amendments begins here:

SUBPART I: GENERAL RULES OF ALLOCATION AND APPORTIONMENT OF BASE INCOME

Section 100.3015 Business Income Election (IITA Section 1501)

- a) For each taxable year beginning on or after January 1, 2003, a taxpayer may elect to treat all income other than compensation as business income. This election shall be made in accordance with rules adopted by the Department and, once made, shall be irrevocable. IITA Section 1501(a)(1).
- b) The election under this section shall be made on the original return filed by the person making the election for the taxable year to which the election applies or on a corrected return filed prior to the due date (including extensions) for the return pursuant to Section 100.9400(f)(3) of this Part. An election made on an original return may also be revoked on a timely-filed corrected return. After the extended due date for filing the return has passed, the election may still be made on an original return, but an election that has been made on the original or corrected return may no longer be revoked.
- c) In the case of a partnership, an estate or trust, or a Subchapter S corporation, for purposes of IITA Section 305, 307 or 308, respectively, an election made by the pass-through entity to treat all of its income as business income shall be binding on its partners, beneficiaries and shareholders. An election by a partner, beneficiary or shareholder to treat all income as business income shall cause all nonbusiness income received by that partner, beneficiary or shareholder from the pass-through entity to be treated as business income received directly by the partner, beneficiary or shareholder.
- d) In the case of a combined group of corporations filing a combined return under Subpart P of this Part, the election shall be made each year by the designated agent of the group and shall apply to all income of the unitary business group required to be shown on the combined return, including income of members who do not join in the filing of the combined return.

(Source: Added at 30 Ill. Reg. _____, effective _____)